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BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION

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REGARDING

LEGISLATION TO ENSURE FAIR TREATMENT
OF AIRLINE EMPLOYEES IN AIRLINE MERGERS
AND SIMILAR TRANSACTIONS

Thank you for the opportunity to appear before your subcommittee today to discuss the Department of Transportation's views on H.R. 4836 and H.R. 4838. Both of these bills would require the Department to impose labor protective provisions as a condition to its approval of an airline merger or acquisition where the underlying transaction would produce certain adverse employment consequences, unless the projected costs of the LPP's would exceed the anticipated financial benefits of the transaction. H.R. 4836, however, explicitly does not apply to applications filed prior to February 1, 1986.

The Department remains opposed to any legislation that would reduce the discretion that we now have to consider the need for LPP's on a case-by-case basis. We believe that a presumption that LPP's be imposed as a condition to the approval of most mergers

and acquisitions is a significant step away from the direction that Congress sought to move the airline industry when it passed the Airline Deregulation Act of 1978. Legislation which favors the imposition of LPP's will also have the effect of seriously undermining the collective bargaining process within the industry.

The standards under which the Department currently reviews the need to impose LPP's in cases involving mergers, acquisitions, and route transfers are fully consistent with a line of precedent developed by the Civil Aeronautics Board. These standards reflect the reality of the transition of this industry from a highly regulated "utility" to an industry governed by competitive market forces.

Prior to the enactment of the Airline Deregulation Act of 1978, the Civil Aeronautics Board routinely imposed LPP's as a condition to its approval of mergers and acquisitions under section 408 of the Federal Aviation Act. Traditional LPP's generally provide that employees whose jobs are lost, downgraded, or transferred as a result of an airline acquisition or route transfer are entitled to financial compensation from their employer. Employees who lose their jobs may be entitled to recieve monthly payments for as long as five years. LPP's also require the carriers to integrate the seniority lists for the two carriers' employees on a fair and equitable basis.

The rationale for imposing LPP's was that, under a highly regulated system of air transportation with extremely limited opportunities for additional route entry, measures needed to be taken to mitigate the prospect of disruption of the air transportation network due to labor strife arising from the implementation of an approved merger or acquisition. The focus of the Board's concern, however, was the stability of the nation's air transportation system, and LPP's were not imposed solely as a matter of employee welfare.

With deregulation of the nation's airline industry, carriers gained the freedom to enter domestic routes based upon the relative demand for additional service in the market. As a result of this freedom, a labor dispute involving an individual carrier's operations no longer held such ominous implications for the overall national air transportation system. A cutback in service by one carrier would provide an opportunity for another airline to enter the market.

The first case in which the CAB considered the issue of LPP's after enactment of the Airline Deregulation Act was the Pan American-National Acquisition Case. The Board announced in that

decision that it would only impose LPP's where required by "special circumstances". Although it did impose LPP's in that instance because the labor parties did not have notice of the Board's new standards, the Board made clear that it would no longer routinely condition its approval of section 408 transactions with LPP's. The Board decided that it should not use its public interest authority under section 408 to second-guess the wisdom of mergers.

The CAB subsequently refined the standards that it used to evaluate the need to impose LPP's. The Board stated that it would generally limit LPP's to those circumstances where it believed they were necessary "to mitigate possible labor strife that would adversely affect air transportation as a whole." This standard has been followed consistently in recent years by the CAB, and now, by the Department. It reflects the historic concern for the stability of the air transportation network that has always been present when considering the need to impose LPP's; it also recognizes the fact that any relationship between the stability of the system and a labor dispute at a particular carrier has become substantially attenuated as a result of deregulation.

I would note that the Department has emphasized that it will consider the question of LPP's on a case-by-case basis. It has also emphasized that it will give interested parties in each proceeding the opportunity to demonstrate why the Department's general approach should not apply in that particular case.

The Department is now considering the issue of LPP's in the context of three acquisition cases, Texas Air-Eastern, Northwest-Republic, and TWA-Ozark. In each of these cases, labor parties have sought the imposition of LPP's as a condition of approval of the transaction under section 408 of the Federal Aviation Act. Of course, because these cases are currently under review by the Department, I cannot comment on the merits of any of the issues involved in the proceedings. I would, however, like to summarize the position that the Department has taken in some of the earlier cases involving the issue of the imposition of LPP's.

At the Department of Transportation, we first considered the question of LPP's in the context of two airline acquisition cases, the Midway-Air Florida Acquisition Show Cause Proceeding and the Southwest Airlines-Muse Air Acquisition Show Cause Proceeding. In both cases the Department clearly stated that it would continue to

assess the need for LPP's based upon the potential for labor unrest which might disrupt the national air transportation system. However no party, in either case, sought to demonstrate that this potential existed if the transactions were approved without mandatory LPP's. The Department, however, did not base its conclusions with regard to LPP's solely on the basis of potential labor unrest. In both cases it concluded, based upon a written record, that the imposition of LPP's would be unlikely to benefit any of the affected employees, and might even place them in a more disadvantageous position.

Therefore, the Department found no basis to condition its approval on the imposition of LPP's. The rationale for these decisions is consistent with precedent that we have inherited from the CAB, as well as with the policies and principles of deregulation which seek to reduce governmental interference in the allocation of economic resources.

The Midway-Air Florida case concerned Midway's proposed acquisition of Air Florida's assets. Air Florida had filed for bankruptcy in the summer of 1984 and suspended all operations. It was able to resume operations later that year only because Midway had provided financial assistance under a joint operating agreement. Midway also agreed to purchase all of Air Florida's

assets, subject to the Department's approval under section 408. However, Midway stated that it would not go forward with the purchase if the Department were to impose LPP's, thereby ending any possibility of Air Florida employees retaining their current jobs. Although the labor parties had not met the legal standard for imposition of LPP's by demonstrating a threat to the national air transportation system posed by possible labor strife, the Department also concluded that, based upon Midway's assertions, the imposition of LPP's would afford no apparent benefits to Air Florida employees.

In the Southwest-Muse case the Department also found that requiring LPP's might reduce the job opportunities of workers at the acquired carrier, in addition to holding that the proponents of LPP's had failed to meet the legal standards for their imposition. Muse was experiencing serious financial difficulties, and its ability to continue operating, absent the acquisition by Southwest, was doubtful. Southwest repeatedly stated that it would not acquire Muse if the Department imposed LPP's. As a result, the Department determined that the "imposition of LPP's could cause the employees of Muse to lose their jobs, an outcome that would clearly be inconsistent with their welfare."

The Department also considered the issue of LPP's in the Pacific Division Transfer Case, which involved the transfer of Pan American's Pacific route authority to United Airlines. Relying on CAB precedent, as well as the Department's recent decisions in the acquisition cases which I have just discussed, the Secretary found that the proponents of LPP's had not demonstrated that the national air transportation system was likely to experience disruption due to any potential labor unrest resulting from the implementation of the route transfer. The Secretary recognized that a strike might result in some passenger inconvenience on the particular routes at issue in the transfer case, but that no threat to the overall air transportation system was likely. It is worth noting that during 1985 both Pan American and United experienced major system-wide labor strikes without any destabilization of the nation's air transportation system. Moreover, neither Pan American or United experienced seniority integration problems as a result of the route transfer, and both carriers have successfully negotiated agreements with most unions which alleviated employee concerns.

As the Secretary noted in the Pacific Division case, were the government to impose the kinds of conditions requested by the

labor parties, it would place the airline industry in an entirely different position from enterprises in other sectors of our economy. Such a result would be inconsistent with both the policies and principles of airline deregulation.

Deregulation has brought air travelers a significant improvement in the choice of available services and fares in most markets. It has also allowed the airline industry the freedom to respond to demand in the marketplace with a minimum of regulatory intrusion. However, with this freedom to compete comes the challenge of developing an efficient cost structure. Prior to deregulation the costs of doing business, including employee salaries, were automatically passed on to passengers in an environment largely devoid of competition.

Today, however, carriers whose work rules, employment levels, and wage structures were developed during the era of regulation must compete in an open market with low-cost airlines that have begun service after deregulation. As carriers continue to align their cost structures with the needs of a competitive environment, it will remain necessary for carrier management and employees to sit down together and reach agreement on a program that best meets the needs of both sides.

It is consistent with the policies of deregulation, and with the treatment of other unregulated industries, to allow the private parties to a proposed transaction to come to agreement among themselves on the appropriate protections to be afforded employees in the event of a merger, acquisition, or route transfer. Labor interests are represented in this process through collective bargaining with carrier management. We have found that unions have been able to use collective bargaining to resolve merger issues. For example, in the People Express-Frontier acquisition three of the four unions involved had resolved their differences with People Express before the Department approved the transaction. In some cases, unions have even opposed LPP's because they would interfere with solutions already achieved through collective bargaining.

Both of the bills before you, by requiring the imposition of LPP's as a condition to approval of many mergers and acquisitions, will undermine the ability of labor and management to bargain collectively to resolve the issues brought about by these kinds of transactions. Regulatory intervention only serves to undercut the collective bargaining process by allowing one side to achieve by government order what it could not accomplish at the bargaining table.

Labor issues are best resolved directly by parties themselves. Labor and management, through collective bargaining, have the incentives to resolve disputes in a manner that is more equitable, effective, and efficient than where the government determines what labor protections are appropriate and then requires that they be adopted as a condition for approval of a related transaction. The government's role should be generally reserved for those instances where a labor dispute might result in a serious disruption of the national air transportation system, thereby invoking action to protect the greater public interest. Wherever such action might be required, we already have sufficient authority and no further legislation is required.

I would like to mention one final difficulty that I see in the practical implementation of both bills. Many of the merger and acquisition proceedings conducted by the Department require the development of substantial analysis dealing with the competitive implications of the proposed transactions. Our experience has been that wherever significant competitive or public interest issues are involved, our review of these transactions is likely to consume the entire six month deadline imposed by the Federal Aviation Act.

In addition to our present statutory responsibilities, both of these bills would require that we also make formal determinations relating to the impact of a section 408 application on the employment, wages, and working conditions of airline employees, as well as conduct a cost/benefit analysis of the impact that the imposition of LPP's would have on the proposed transaction. As a practical matter, these determinations require detailed findings of fact based on a comprehensive evidentiary record developed for that purpose. Based upon our experience processing these kinds of cases, we believe that it may not be possible to fully consider the competitive and public interest issues raised by a proposed merger or acquisition, together with the additional labor-related issues required under these bills, and still meet the six month statutory deadline for issuing a final decision.

However, I do not mean to suggest that an extension of the statutory deadline would be an acceptable solution from the point of view of the Department. We believe that the standards that we presently apply in considering LPP issues best serve the overall public interest by encouraging airline employees and management to resolve labor-related issues through the collective bargaining process.

This concludes my prepared testimony. I will be happy to answer any questions that the committee might have.